

The respondent argues the Board does not have jurisdiction to entertain this appeal if the laptop computer is considered medical treatment because a denial of medical benefits is not a jurisdictional issue subject to Board review from a preliminary hearing. In the alternative, respondent argues that if the Board determines the laptop computer and software are not medical treatment, the ALJ would only exceed his jurisdiction if he had ordered respondent to provide the laptop computer and software. Since the ALJ did not order respondent to provide the laptop computer and software, the ALJ did not exceed his jurisdiction and his order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

This is an appeal from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing issues and findings is generally limited to the following:¹

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?

Additionally, the Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.² Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.³

Claimant alleges the laptop computer and software are medical benefits necessary to cure and relieve claimant from the effects of his injury. An ALJ has the jurisdiction and authority to grant or deny medical compensation at a preliminary hearing. Whether claimant's medical condition warrants the treatment that claimant requests is not an issue that is subject to review by the Board from a preliminary hearing order.

Stated another way, claimant has argued that the laptop computer and software are medically necessary. Assuming such equipment would be considered "medical treatment" within the purview of K.S.A. 44-510h, it is within the jurisdiction of the ALJ to deny such treatment and such denial is not a jurisdictional issue subject to Board review from a preliminary hearing.

In this case resolution of the jurisdictional issue is not dependent upon resolution of the substantive issue of whether the laptop computer and software is "medical

¹ K.S.A. 44-534a(a)(2).

² K.S.A. 44-551(b)(2)(A).

³ See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683, P.2d 902 (1984).

treatment.” If the laptop computer and software is “medical treatment” then the ALJ had the authority to either grant or deny such benefits and it is proper for the Board to dismiss the appeal.⁴

On the other hand, if the laptop computer and software is not “medical treatment” the ALJ would not have jurisdiction to order such benefits at a preliminary hearing where the issues are limited to the furnishing of medical treatment and temporary total disability compensation.⁵ Because the ALJ did not order respondent to provide the laptop computer and software it cannot be alleged he exceeded his authority. The ALJ’s Order renders moot the argument that he exceeded his authority.

Claimant has neither alleged nor raised a jurisdictional issue for Board review from the preliminary hearing Order and the appeal is, and should be, dismissed.

AWARD

WHEREFORE, the Board dismisses the appeal, leaving the August 27, 2002, Order of Administrative Law Judge John D. Clark in full force and effect.

IT IS SO ORDERED

Dated this_____ day of December 2002.

BOARD MEMBER

c: W. Walter Craig, Attorney for Claimant
Vincent A. Burnett, Attorney for Respondent
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation

⁴ *Hedrick v. U.S.D. No. 259*, 23 Kan. App. 2d 783, 935 P.2d 1083 (1997).

⁵ K.S.A. 44-534a(a)(2).